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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/614,790

07/12/2000

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HME/7982.001

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29085 7590 03/11/2008  
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EXAMINER

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ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

03/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

1 RECORD OF ORAL HEARING  
2  
3 UNITED STATES PATENT AND TRADEMARK OFFICE  
4

5  
6 BEFORE THE BOARD OF PATENT APPEALS  
7 AND INTERFERENCES  
8

9  
10 Ex parte SHARON F. KLEYNE  
11

12  
13 Appeal 2007-0945  
14 Application 09/614,790  
15 Technology Center 1600  
16

17  
18 Oral Hearing Held: February 12, 2008  
19

20  
21  
22 Before DONALD E. ADAMS, DEMETRA J. MILLS, and LORA M.  
23 GREEN, *Administrative Patent Judges*.  
24

25  
26 ON BEHALF OF THE APPELLANT:  
27

28 HOWARD EISENBERG, ESQ.  
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32  
33 The above-entitled matter came on for hearing on Tuesday, February  
34 12, 2008, at the U.S. Patent and Trademark Office, 600 Dulany Street,  
35 Alexandria, Virginia, before Virginia Johnson, Reporter.

1 MS. BOBO-ALLEN: Good morning. Calendar Number 4,  
2 Appeal Number 2007-0945. Mr. Eisenberg.

3 JUDGE ADAMS: Thank you. Good morning,  
4 Mr. Eisenberg.

5 MR. Eisenberg: Good morning. How are you today?

6 JUDGE ADAMS: Good. How are you?

7 MR. EISENBERG: Good.

8 JUDGE ADAMS: And, we're familiar with your issues, and  
9 you have 20 minutes, and you can begin when you are ready.

10 MR. EISENBERG: Okay. I must say, I have never appeared  
11 before, the Board before.

12 JUDGE ADAMS: Oh, great.

13 MR. EISENBERG: So, I may do something that's protocolly  
14 incorrect; please let me know.

15 JUDGE ADAMS: Absolutely. Welcome.

16 MR. EISENBERG: Just put this over here. Thank you.

17 JUDGE ADAMS: Brought samples, cool.

18 MR. EISENBERG: I, I thought that the Examiner would most  
19 likely be here. Isn't that the way it usually works?

20 JUDGE ADAMS: Doesn't have to be. The Examiner can  
21 always request the opportunity to come and present arguments.--

22 MR. EISENBERG: Okay, well in that case I guess I won't  
23 need any rebuttal time, since there's nothing to rebut. Alright, I wanted to --  
24 the reason I requested a hearing is because it's not always clear what the,  
25 what the invention is trying to address and what the invention is. So, I  
26 thought I wanted to go into that. First thing I wanted to talk about was --

1 discuss what the tear film of the eye is made of. This and everything I've  
2 said today has all been discussed with the Examiner previously; nothing,  
3 nothing is new. I understand that's, that's what I have to do. That's what  
4 I'm keeping with. The tear film of the eye -- can I, can I bring up a little  
5 picture that I just drew out in the hallway there, or should I stand back here?

6 JUDGE ADAMS: Has the Examiner seen any of this?

7 MR. EISENBERG: Yes, the Examiner actually saw a -- I  
8 submitted a CD to the Examiner. We showed him this; the picture from the  
9 CD, and I submitted this, this CD as part of the brief and the, and the -- we  
10 had discussed this in an interview. And, then the, the, the, I guess the Board  
11 doesn't allow CDs and that is part of it. That would be Exhibit A or B, I  
12 believe.

13 JUDGE ADAMS: Okay, so it's of record?

14 MR. EISENBERG: On the first one. And, that was on the CD  
15 which had been shown.

16 JUDGE ADAMS: Okay.

17 MR. EISENBERG: It actually showed this picture and it  
18 showed more than this picture because it was, it was alive there.

19 JUDGE ADAMS: So, it's on the CD as an Exhibit? --

20 MR. EISENBERG: It was on the CD as -- the CD was an  
21 Exhibit on the -- on my Appeal Brief; that would be, excuse me --

22 JUDGE ADAMS: And the reason I'm asking is before I let  
23 you bring that up here, I want to make sure that evidence was before the  
24 Examiner.

25 MR. EISENBERG: Exhibit 2-A in the Appeal Brief, that was,  
26 that was a CD. I had shown this to the -- as stated in the Appeal Brief, I had

1 shown this to the Examiner in an interview on -- it was submitted with the  
2 Declaration of January 30th, 2004. So, the Examiner did have a look at that  
3 and he and I discussed it in an interview.

4 JUDGE ADAMS: Thank you.

5 MR. EISENBERG: Anyway, the tear film -- I'll just leave this  
6 here and I'll --

7 JUDGE ADAMS: Sure, we'll make sure we give this back to  
8 you before you leave.

9 MR. EISENBERG: I won't really need it, thank you. The tear  
10 film is made of three layers. There's an outer protective layer, which is a  
11 lipid layer that protects the, the eye from, from dust and also prevents or  
12 reduces an evaporation of the water in the, in the tear film. The middle layer  
13 is an aqueous layer that's has water and has other solutes inside; proteins,  
14 antibodies, electrolytes and that's the business layer of the tear film. And,  
15 then there's an internal layer called the mucous layer which adheres the tear  
16 film to the eye.

17 Now, when we're, when we're getting a -- when the eye is becoming  
18 dry -- we've all experienced dry-eye. What's happening is that the tear film  
19 is not going away. What's happening is that the aqueous layer is losing  
20 water. The water is evaporating through the lipid layer and becomes thinner  
21 and thinner, and this is also on the, on the CD. This is showing the dry-eye.  
22 Dry-eye, you'll see, has a, has a thinner, has a thinner aqueous layer because  
23 water has, has evaporated from it. There's still the same amount of solids,  
24 solutes inside the aqueous layer, so it's more concentrated, and it stings.  
25 We've all experiences the stinging sensation.

26 Now, the aqueous layer is very small. The whole tear film is very

1 small; about two to five micro liters, and that's a key point. It's a very tiny  
2 amount of, of fluid. Now, again when the eye dries, it's due to loss of water.  
3 It's not due to loss of the tear film itself. The tear film is intact, but the, but  
4 the inside becomes more concentrated. Now, what we've done in the -- with  
5 prior art, dry-eye formulations that you can purchase what they do is you  
6 take a drop and you put it over your eye and you'd squeeze a drop of fluid  
7 into your eye. A drop is about 25 to 30 micro liters; about seven to ten times  
8 the volume of the tear film and so what it does is it washes away the tear  
9 film. So, there's no more three layer tear film and it replaces it with a single,  
10 with a single layer film of whatever it is that's in the -- that you put in your  
11 eye.

12 Now, the body rejects this a little bit. We've all blinked a few times  
13 after we put in tear film -- sorry, a, an eye drop into our eye, and it takes a,  
14 oh I don't know, five, ten seconds to, to replenish the tear film again to build  
15 it up and get rid of all this foreign stuff which you just put into your eye. So,  
16 that's the problem we're, we've, that -- what the invention addresses. And,  
17 what we've done with this -- what we've done is rather than, is rather than  
18 using a, rather than washing away the tear film and replacing it with a  
19 whatever; an ocular fluid. We're just going to leave the tear film in tact and  
20 restore it by adding water to the middle layer of the eye; a tear film while  
21 keeping the eye in tact. And, the way we do this is with a mist. And, this  
22 has been shown to the Examiner in the, in the, in the video also. And, what  
23 you do is you just spray like this, so you have millions of little droplets and  
24 what they do is they land on the outside of the tear film and they, they, they  
25 diffuse through the lipid layer and add water to the, to the central aqueous  
26 layer, filling it up again and making it less concentrated and your eye

1 doesn't sting anymore. That's, that's, that's what the invention is doing.

2 Now, and this is reflected in the claims. The Claims all call for a mist,  
3 which are tiny droplets dispersed in airs, as dispersed in air and they diffuse  
4 to the outer layer. It's only water. We don't need to add, we don't need to  
5 add other things to the water because if we do, that's just going to make the  
6 inner layer more concentrated. We're trying to dilute the inner layer, so it's  
7 just water. And, we're using enough that we do not wash away the tear film.  
8 We spray --

9 JUDGE ADAMS: Well, wait, wait --

10 MR. EISENBERG: Okay.

11 JUDGE ADAMS: -- it's not just water. --

12 MR. EISENBERG: It consists --

13 JUDGE ADAMS: --it's consisting essentially of water.

14 MR. EISENBERG: -- essentially of water, yeah.

15 JUDGE ADAMS: Now, if you meant just water, you'd say  
16 consisting of water, right?

17 MR. EISENBERG: There's no such thing in the world as just  
18 water.

19 JUDGE ADAMS: Okay.

20 MR. EISENBERG: So --

21 JUDGE ADAMS: So, what do you exclude by "consisting  
22 essentially of"?--

23 MR. EISENBERG: We're, we're, we're excluding things like  
24 preservatives, lubricants; things that have a physiological effect. There's  
25 going to be trace minerals. You cannot, you cannot get rid of that. Spring  
26 water, tap water, dilute probably would be fine; distilled water. It's just --

1 it's, it's -- there's no such thing in the world as, as just water.

2 JUDGE ADAMS: Now, why would a preservative materially  
3 affect this composition?

4 MR. EISENBERG: It would materially affect the composition  
5 because that is adds concentration, because you're trying to dilute the eye.  
6 Anything you're putting in there makes so you're not diluting the, the, the  
7 eye. You're adding more solids to the --

8 JUDGE ADAMS: For example, a mineral.

9 MR. EISENBERG: Yes, for example, minerals.

10 JUDGE ADAMS: But water contains --

11 MR. EISENBERG: We have to have some. It's impossible to  
12 get it out. We, we have it as low as possible. What we're trying to say is as  
13 low as, as low as water.

14 JUDGE ADAMS: So, you're saying it's okay to concentrate  
15 the amount of minerals, but it's not okay to concentrate the amount of  
16 something else.

17 MR. EISENBERG: I don't know, I don't know that I said that.  
18 We're, we're having as low as possible; as low as physically possible.  
19 We're using -- we're trying to use pure water. Unfortunately, it's impossible.  
20 It's physically impossible to, to get pure water. So, it's consisting  
21 essentially of water. I mean as pure as we can possibly get it.

22 JUDGE ADAMS: That doesn't require the ionized water, just  
23 --

24 MR. EISENBERG: No.

25 JUDGE ADAMS: -- sea water.

26 MR. EISENBERG: In fact, this water that we're using in the



1 commercial embodiment is, is spring water. I, I have also used this kind of  
2 thing with and it's distilled water, which of course has -- distilled water has a  
3 good amount of -- has, has minerals in it, but as low as it possibly can be.  
4 So, we're trying to make it as low as, as low as possible just to dilute the  
5 eye. Now, the reason that that's important is because the prior -- well, I'm  
6 jumping ahead of myself a little bit. I wanted to go to the prior art that the  
7 Examiner has cited and if any, if I have any, if, if there's any points I've  
8 missed so far, please let me know and I'll go back. The Examiner has four,  
9 four prior art references which are combined. Two of them we feel are not,  
10 are not pertinent at all and I'll explain to you why.

11 The first one is Junkel, excuse me, Junkel is Patent Number 5620633.  
12 But, Junkel is, is a device for making a mist. And, you place this mist next  
13 to, next to your body and, and if a person is overheated due to physical  
14 exertion or sunbathing, the mist is a cooling mist which makes, makes you  
15 feel better. And, there's no disclosure in Junkel about, about directing the  
16 mist to the face. There's no disclosure in Junkel about directing it to the  
17 eyes. It's just a device for making, making a mist so you feel better. The --

18 JUDGE GREEN: Well, if somebody were to take a device like  
19 that; like a mister that I took to my daughter's soccer games and I use it to  
20 mist my face. I would put the, you know, water from the tap or spring water  
21 in there. How would that differ from what you do?

22 MR. EISENBERG: How do --

23 JUDGE GREEN: If I were to direct it to my face, yes.

24 MR. EISENBERG: Well, two ways; one, I don't know what  
25 you're using. Is it just water?

26 JUDGE GREEN: But, I'm just saying a mister with just like

1 spring water in it.

2 MR. EISENBERG: Well, it depends how much used there,  
3 and again if you use a lot of mist, you're going to flood the eye. And, that's  
4 going to get to my second reference, because they do talk about misters. So,  
5 that, that will address what you're talking, what you're, what you're  
6 referring to because -- if -- let me address that by addressing the second, the  
7 second reference which is Hahn.

8 Hahn is 5893515, and that is a mister with, with fluid. And, that's  
9 going toward the face and the eyes. So, Judge Green, does that, does that  
10 address what you're asking me?

11 JUDGE GREEN: Well, it's just that, you know, the misters  
12 are out there.

13 MR. EISENBERG: The misters are out there.

14 JUDGE GREEN: And, people will do a quick thing over their  
15 face to relax them, to wake them up from a plane, whatever. I'm just trying  
16 to figure out how your method differs. Even though the, the benefit of  
17 increasing the aqueous -- replenishing the aqueous layer of the tear film  
18 wasn't known, I just don't know how that your method differs from those  
19 kinds of methods.

20 MR. EISENBERG: It would differ in one way, and that is  
21 also, that, that's the, again, the next reference Hahn because Hahn is a mister  
22 which is directed towards the face. And, Hahn does two things; one, one is  
23 does not address what you said because it's a little more restrictive, Hahn  
24 talks about a fluid, an ocular fluid. Ocular fluids, ocular fluids have more  
25 things in them then, then water. They have lot of electrolytes.

26 The reason they have electrolytes and other things is because they're

1 using a quantity of fluid which is sufficient to wash away the tear film. If  
2 you wash away the tear film and replace it with water you expose the eye to  
3 osmotic shock. The eye physiologically has an osmolarity of about 300  
4 milliosmoles. Water, distilled water maybe five or ten or something like  
5 this, I'm not really sure about that. But, if you just, if you, if you expose it  
6 too abruptly to just water, you shock the eye. And, the eye has to blink to get  
7 rid of that water and add and put electrolytes back in. So, so therefore,  
8 ocular fluids have had stuff in them to bring the osmolarity up to  
9 physiological. And, Hahn discloses ocular fluids of various types. He calls  
10 -- he had different, different names, eye fluids. He has a bunch of different  
11 names. So, that's one difference between us and, and, and Hahn. Your  
12 question though, was not. Your question was just distilled water. So, the  
13 other thing that Hahn talks about is how much to use, and how much, and  
14 how, and Hahn is, is, excuse me. Hahn discloses to flood the eye. Use  
15 about a drop. Flooding the eye, again, will, will, will wash away the tear  
16 film, and, and it will then run down the tear duct into the, the nose. It will  
17 wash it away.

18 So, the difference of what you're talking about is, again, the amount.  
19 You, you, you take -- if I took this -- somebody said, well, I'll just take this  
20 and I'll spray it. This actually is very fine because it's made for this  
21 purpose, but if it's just a mister, I mean, I don't know. It's, it's, it's how  
22 much you would use, you know, you go like this. There's no teaching of  
23 how much, of how much to use because people aren't -- because the prior art  
24 -- every thing the prior art had done is washed away the tear film or replaced  
25 it with something else as opposed to leaving it in tact, and that's what we're  
26 trying to do.

1           That's the second reference; Hahn. So, it's the old technology of, of  
2 replacing the, the tear film with whatever you're using either in the form of  
3 the mist as in Hahn or in the form of drops which is what you can get in your  
4 drug store.

5           The third reference is Hutson, another patent, that's 5888564 and, and  
6 that reference is similar to Hahn; discloses a device to mist, doesn't say  
7 anything about how much to use, but talks about using an ocular fluid again.  
8 So, they're, they're pretty similar. Both of them are devices for, for making  
9 a mist.

10          The fourth reference is Embleton which is a PCT application 97-  
11 023177. And, that reference is concerned with a totally different problem  
12 then we're, then we're dealing with. That's deal -- that deals with the  
13 problem of how to administer a medication to the eye. And, the problem  
14 there has always been recognized for a long time that if you put too much, if  
15 you, if you use too much in the eye, it runs out. And, you can't accurately  
16 dose it because it'll run down the face. You don't know how much has  
17 gotten into your eyes. If you use too much, also you, you flood the eye.  
18 When you flood the eye it runs down the tear duct, then, then you sniff it in.  
19 You inhale it and, and whatever you're using in your eye now goes into  
20 systemic circulation. So, that's a bad thing. So, Embleton addresses that  
21 problem.

22          Embleton also discloses that it must be a jet or a stream, and this is  
23 important for Embleton because as opposed to a mist -- we're talking a mist,  
24 which again is a dispersed, dispersed droplets in air; dispersed. Embleton,  
25 you can see, you cannot direct that to the eye. Embleton discloses a jet or a  
26 stream which is important to direct it to the eye and not only that, to a

1 particular portion of the eye. So, because Embleton discloses a jet or a  
2 stream, that's, that's, that's a distinction that, that, that the reference  
3 Embleton has nothing to do with what we're doing, because, we're not  
4 doing, we're not doing that. And, we feel that the art submission that he  
5 teaches is away from the mist because you can't use a mist with Embleton.  
6 It's not pertinent. I'm not sure if I missed -- oh yeah, another thing about  
7 Embleton -- thank you -- is that the Examiner cited this for Embleton  
8 because he discloses a, a fluid which can contain, which can contain a  
9 medication and it can be based on waters, oils or a physiologic saline.  
10 That's on Page 6, I believe. And so, we submitted a long time ago a  
11 Declaration by Dr. Rachael Garrett from the University of Idaho, I think --  
12 no, I can't remember where. Anyhow, and she, she testified and we sent in,  
13 and, and we sent in other evidence along with her, she did that ocular fluids  
14 must have other things in them. And, the reason they have other things in  
15 them is because you have to -- because again they're used to replace the, the  
16 tear film. They replace the tear film, you can't, you can't -- dogma in the, in  
17 the art that you can't give something which is hypo-osmotic because you  
18 cause shock to the eye. So, what our, our, our submission is that there is no  
19 prima, prima facie case of obviousness here.

20 The other thing is, of course, let's say he has -- the Examiner has  
21 established a prima facie case of obviousness. We've submitted other  
22 evidence which we feel overcomes the prima facie case of obviousness and  
23 that --

24 JUDGE MILLS: Can I ask a question --

25 MR. EISENBERG: Of course.

26 JUDGE MILLS: -- about Embleton?

1 MR. EISENBERG: I didn't hear it. I'm sorry, what, what?

2 JUDGE MILLS: Didn't Embleton describe minimal amounts  
3 of fluid in the range of three to eight micro liters?

4 MR. EISENBERG: Yes.

5 JUDGE MILLS: What's the maximum that you are delivering  
6 by the misting?

7 MR. EISENBERG: Probably ten. So, we're - he's within the  
8 range. Right, right, we feel that Embleton, Embleton is however in the form  
9 of a jet because he's, he's trying to administer medication which must all  
10 make it into the eye. So, that's, that's the distinction. The, the difference of  
11 Embleton is not, is not the amount.

12 JUDGE MILLS: Okay, thank you.

13 JUDGE ADAMS: So, then the question with Embleton would  
14 be the, the diameter of the droplet that is administered.

15 MR. EISENBERG: Oh, I'm sure it's, it's --

16 JUDGE ADAMS: Is that the --

17 MR. EISENBERG: I'm sure it's tiny.

18 JUDGE ADAMS: Is that the argument?

19 MR. EISENBERG: Because in their facts, there was a  
20 Laibovitz reference which was, which was administered which is also a jet  
21 or a stream and that is droplets. You can -- that are, that are, that are in the  
22 size of what's in the mist. You can have very tiny little droplets.

23 JUDGE ADAMS: Okay.

24 MR. EISENBERG: But, actually, that's very good for a jet  
25 because you want, you want to really direct it to a -- the eye is not very big  
26 and if you're trying to, if you're trying to make it in just the lateral acanthus

1 of the eye, and you want, you want these droplets pretty small.

2 JUDGE ADAMS: So, Embleton talks about a jet stream of  
3 water having an average particle size that falls within the range that you  
4 disclose in the Claim?

5 MR. EISENBERG: Yes, but it's not a mist.

6 JUDGE ADAMS: And, administers approximately the same  
7 amount of material. Is that right?

8 MR. EISENBERG: Yes.

9 JUDGE ADAMS: So, we're just discussing the semantic  
10 difference between a jet and a stream?

11 MR. EISENBERG: I don't know that it's semantic.

12 JUDGE ADAMS: Okay.

13 MR. EISENBERG: Because a jet is, is, is forceful. I don't  
14 know. Actually, I should look it up, I haven't thought about this until just  
15 now, sorry, but will a jet, will a jet be enough to disrupt the eye; the, the, the  
16 tear film? I don't, I don't, I don't know.

17 JUDGE ADAMS: Whose burden is that?

18 MR. EISENBERG: What?

19 JUDGE ADAMS: Whose burden is that --

20 MR. EISENBERG: It's our burden.

21 JUDGE ADAMS: -- to figure out?

22 MR. EISENBERG: I'm just, I'm just conjecturing, now.

23 JUDGE ADAMS: Alright.

24 MR. EISENBERG: I'm thinking, I'm thinking I could have  
25 possibly done before. The -- it's not, it's not, it's not as comfortable to use  
26 as a, as a, as a mist would be. You have to, you have to direct it. It's

1 difficult for an older person to use.

2 JUDGE ADAMS: Is that relevant to this discussion?

3 MR. EISENBERG: It is relevant because a mist  
4 -- because we're saying it's, it's a mist and we, and we, and we, we're, and  
5 we're, and we're mist is, is, is a mist, but it -- would it hydrate the eye? It  
6 would hydrate the eye, but if Embleton does not disclose again, again using  
7 just anything that's made of water either.

8 JUDGE ADAMS: Now, does your Claim require that you  
9 hold this misting container some distance away from the eye?

10 MR. EISENBERG: No, you don't have to.

11 JUDGE ADAMS: Or, does it include --

12 MR. EISENBERG: You don't have to.

13 JUDGE ADAMS: -- within the scope holding it up to the eye?

14 MR. EISENBERG: Up to the eye?

15 JUDGE ADAMS: Right. Is there something in your --

16 MR. EISENBERG: No.

17 JUDGE ADAMS: -- is there something in your Claim that  
18 distinguishes that?

19 MR. EISENBERG: Well, I would say yes. The reason being  
20 is that if I, if it's really close to the eye, it doesn't have enough place to  
21 become a mist. It's a, it's a pretty directed spray. If, if you look at it, you  
22 can see I never get anything by this before either, but if you look at it real  
23 close-up, it's, it's -- until it comes out here, it starts, it starts to disperse  
24 about this amount over here. So, I don't know that, that, that would be the  
25 case. It wouldn't be a mist at that point. It wouldn't be dispersed.

26 JUDGE ADAMS: One question while we're discussing the



1 scope of the Claim; the last clause in the Claim, wherein the water is sprayed  
2 on the surface of the eye within a period of ten seconds. Does that mean you  
3 spray it on the eye for ten seconds? What's this?

4 MR. EISENBERG: No, within.

5 JUDGE ADAMS: What do we mean by, within a period of ten  
6 seconds?

7 MR. EISENBERG: It's a small amount of time, so as not to --  
8 again, the reason for that is -- maybe it's redundant, but it's, it's there so you  
9 don't add enough to flood the eye. It's an amount issue. Because if I do this  
10 for a while, and that's only about three seconds, probably. If I keep going --

11 JUDGE ADAMS: So, we should interpret --

12 MR. EISENBERG: I will flood the eye and --

13 JUDGE ADAMS: We should interpret that as you spray this  
14 mist toward the eye for a period of ten seconds?

15 MR. EISENBERG: No, no, no. It says, it says within a period  
16 of ten seconds because that could go down to a tenth of a second.

17 JUDGE ADAMS: Okay. Because the way it reads it's almost  
18 as if you're intending to say something happens, and then within a period of  
19 ten seconds you're spraying the stuff on your eye.

20 MR. EISENBERG: If that's a, that's a non-clarity, I'll have to,  
21 I'll have to amend that. I never, I never considered that, I'm sorry. I was  
22 going to go further and talk about the --

23 JUDGE ADAMS: Please do. We're a little bit over, but we'll  
24 give you another few minutes.

25 MR. EISENBERG: Thank you, very much. The, the  
26 Declarations we have show on, on Dr. Darwin Liao testified that he has

1 increased compliance, such unexpected advantageous properties are  
2 increased compliance because of his patients now are using, are using the  
3 commercial embodiment as opposed to not liking the prior art methods and  
4 so they're actually using it to hydrate their eyes, so their eyes are staying  
5 better hydrated.

6 We have on Declarations from Dr. Phillip Payden that, that this is a  
7 departure from, from dogma in the art of using water because water caused  
8 osmotic shock because in prior art it is replacement. Replacement  
9 technology as opposed to, as opposed to re-hydrating technology; re-  
10 hydrating the aqueous layer. We have an article sent in by the Commission  
11 Exchange. I'm drawing a blank because I'm real nervous and that's -- that  
12 shows that our troops in Iraq are using, are using this as a military is, is, is  
13 purchasing this for, for use for, for troops is a dry area.

14 So, our contention there is that even if the Examiner has made a prima  
15 facie case, I submit they have not. There's enough evidence to, to overcome  
16 that prima facie of obviousness.

17 JUDGE ADAMS: Okay, any further questions?

18 JUDGE MILLS: I don't have any questions right now.

19 MR. EISENBERG: No? As I've not done this before so at  
20 this point, I just pick-up my stuff and I leave?

21 JUDGE ADAMS: I'm going to thank you --

22 MR. EISENBERG: Okay.

23 JUDGE ADAMS: -- for your time and your presentation.  
24 And, you did well for your first time, very good.

25 MR. EISENBERG: Thank you, very much.

26 JUDGE ADAMS: And, I'd like to have you hold on one

1 second and have our transcriptionist ask you any questions that she needs --

2 MR. EISENBERG: Okay.

3 JUDGE ADAMS: Such as the spelling of your name.

4 MS. JOHNSON: I believe that I have the spelling of your  
5 name. And, your first name is Howard?

6 MR. EISENBERG: Um-hum.

7 MS. JOHNSON: And, your last name is E I S E N B E R G?

8 MR. EISENBERG: Yes, it is.

9 MS. JOHNSON: Perfect. The spellings I do have are just a  
10 couple of the doctors and a couple of the references.

11 MR. EISENBERG: Okay.

12 MS. JOHNSON: Junkel. Is that J U N K L E?

13 MR. EISENBERG: K E L.

14 MS. JOHNSON: K E L.

15 MR. EISENBERG: J U N K E L?

16 MR. EISENBERG: Yes, ma'am.

17 MS. JOHNSON: Hahn, is that H A N N?

18 MR. EISENBERG: H A H N.

19 MS. JOHNSON: H A H N. And, Hutson, H U D S O N?

20 MR. EISENBERG: I'm not sure if it's a T or a D. Let me get  
21 that for you. Sorry, if I'm taking up your time. H U T S O N.

22 MS. JOHNSON: Embleton, E M B L E T O N?

23 MR. EISENBERG: Um-hum.

24 MS. JOHNSON: Rachael Garrett, R A C H E L G A R R E T  
25 T?

26 MR. EISENBERG: Last name is correct. She spells her first

1 name R A C H A E L.

2 MS. JOHNSON: R A C H A E L. Laibovitz?

3 MR. EISENBERG: L A, L A I B O V I T Z, Laibovitz.

4 MS. JOHNSON: Laibovitz, and Dr. Darwin Liao?

5 MR. EISENBERG: Darwin Liao, that's Darwin, D A R W I

6 N, and Liao, sorry, I'm not clear with the way he -- L I A O.

7 MS. JOHNSON: L I A O. I believe that that is all. Thank you  
8 so much.

9 JUDGE ADAMS: Okay and I'll ask you to pick these up on  
10 your way.

11 MR. EISENBERG: Thank you --

12 JUDGE ADAMS: Thank you, very much.

13 MR. EISENBERG: -- all for your time.

14 (Whereupon, the proceedings concluded.)

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